

STATE OF MICHIGAN
COURT OF APPEALS

JACK P. BOSS,

Plaintiff-Appellant,

v

STATE OF MICHIGAN and
MICHIGAN DEPARTMENT OF TREASURY,

Defendants-Appellees.

UNPUBLISHED

January 15, 2009

No. 281122

Court of Claims

LC No. 05-000207-MT

Before: Talbot, P.J., and Bandstra and Gleicher, JJ.

PER CURIAM.

Plaintiff appeals by right an order granting summary disposition to defendants on the ground that plaintiff failed to properly invoke the jurisdiction of the Court of Claims. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case concerns plaintiff's challenge to a Single Business Tax (SBT) assessment on Eagle Transport Services, Inc. (Eagle). Eagle was assessed with a SBT deficiency in the amount of \$52,160 for the taxable period ending in December 2002. A penalty of \$13,040 was added, as was interest, which apparently continues to accrue. When Eagle did not pay the assessment, the Michigan Department of Treasury sought to recover the money from plaintiff directly. It maintained that plaintiff, who was the president, treasurer, and secretary of Eagle, at least until March of 2003, was responsible for payment pursuant to MCL 205.27a (5).

Plaintiff brought suit in the Court of Claims, seeking a declaratory judgment that he did not owe this assessment. The court granted summary disposition for defendant pursuant to MCR 2.116(C)(4), concluding that it lacked jurisdiction because plaintiff failed to pay the assessment prior to challenging it in the Court of Claims. Jurisdiction is a question of law that we review de novo. *W A Foote Memorial Hosp v Dep't of Pub Health*, 210 Mich App 516, 522; 534 NW2d 206 (1995).

MCL 205.22 sets forth procedures through which an aggrieved taxpayer can appeal a tax assessment to the Tax Tribunal or the Court of Claims. At the time pertinent to the proceedings in this case, MCL 205.22 provided in relevant part:

(1) A taxpayer aggrieved by an assessment, decision, or order of the department may appeal the contested portion of the assessment, decision, or order

to the tax tribunal within 35 days, or to the court of claims within 90 days after the assessment, decision, or order. The uncontested portion of an assessment, order, or decision shall be paid as a prerequisite to appeal

(2) An appeal under this section shall be perfected as provided under the tax tribunal act, Act No. 186 of the Public Acts of 1973, as amended, being sections 205.701 to 205.779 of the Michigan Compiled Laws, and rules promulgated under that act for the tax tribunal, or chapter 64 of the revised judicature act of 1961, Act No. 236 of the Public Acts of 1961, as amended, being sections 600.6401 to 600.6475 of the Michigan Compiled Laws, and rules adopted under that chapter for the court of claims. *In an appeal to the court of claims, the appellant shall first pay the tax, including any applicable penalties and interest, under protest and claim a refund as part of the appeal.*

* * *

(4) The assessment, decision, or order of the department, if not appealed in accordance with this section, is final and is not reviewable in any court by mandamus, appeal, or other method of direct or collateral attack. [Emphasis added.]

There is no dispute that plaintiff failed to pay the assessment in question, and so did not fulfill the requirements of MCL 205.22(2). As a result, plaintiff failed to perfect, or invoke, the jurisdiction of the Court of Claims. See *Montgomery Ward & Co v Dep't of Treasury*, 191 Mich App 674, 680; 478 NW2d 745 (1991). “When a court lacks subject matter jurisdiction to hear and determine a claim, any action it takes, other than to dismiss the action, is void.” *Bowie v Arder*, 441 Mich 23, 56; 490 NW2d 568 (1992), citing *Fox v Univ of Michigan Bd of Regents*, 375 Mich 238, 242; 134 NW2d 146 (1965).

Plaintiff appears to argue that the Court of Claims erred because, before it could find that it lacked jurisdiction, it should have ruled on his assertion that he was not a taxpayer, and that payment as a precondition to appeal pursuant to MCL 205.22 did not apply to him. However, plaintiff has failed to support this assertion. Plaintiff provides no case law or statutory support for his claim that only taxpayers are subject to the requirements of MCL 205.22(2). Plaintiff also fails to provide any analysis to demonstrate that he was not a taxpayer, as that term is used in MCL 205.22, and does not furnish any statutory or other definition that would justify this assertion. Nor does plaintiff discuss his possible tax liability as a seller under MCL 205.27a (1), notwithstanding whether he was liable for the unpaid taxes pursuant to MCL 205.27a(5). “It is not sufficient for a party ‘simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position.’” *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182,

203; 94 NW2d 388 (1959). “Failure to brief a question on appeal is tantamount to abandoning it.” *Mitcham, supra* at 203. Accordingly, we decline to address this issue. *Wilson, supra* 15 243.

Affirmed.

/s/ Michael J. Talbot
/s/ Richard A. Bandstra
/s/ Elizabeth L. Gleicher